REMARKS

Applicant respectfully requests reconsideration of this application as amended.

Office Action Rejections Summary

Claims 9 – 10 and 24 have been rejected under 35 U.S.C. §112, first paragraph.

Claims 1, 11 – 14 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over International Publication No. WO 00/19320 of Sweet et al. (hereinafter "Sweet") in view of U.S. Patent No. 5,949,976 of Chappelle (hereinafter "Chappelle").

Claims 2 – 6, 9 – 10, 17 – 29 and 31 – 41 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sweet in view of Chappelle, and further in view of U.S. Patent No. 6,138,157 of Welter et al. (hereinafter "Welter").

Claims 7 and 8 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sweet in view of Chappelle, in view of Welter, and further in view of U.S. Publication No. 2001/0056483 of Davis et al. (hereinafter "Davis").

Claim 15 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Sweet in view of Chappelle, and further in view of U.S. Patent No. 6,157,618 of Boss et al. (hereinafter "Boss").

Claim 30 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Sweet in view of Chappelle, in view of Welter, and further in view of Boss.

Status of Claims

Claims 1 – 14, 17 – 26, 28, 29, and 31 – 45 remain pending in the application. Claims 1 – 3, 6, 19, and 38 have been amended to define the invention more properly. The amended claims are supported by the specification and no new matter has been added. Claims 15, 16, 27, and 30 have been canceled without prejudice. New claims 42 – 45 have been added. The new claims are supported by the specification and no new matter has been added.

Rejections under 35 U.S.C. §112

Claims 9 – 10 and 24 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. In particular, the Office Action states:

> The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 9-10 and 24 refer to cookies that are pre-set on the host digital processing system. This is contrary to information in the specification, which describes that a business site (i.e. a host digital processing system) presets cookies in a monitoring configuration (pg. 11, line 18) that resides in the remote digital processing system (pg. 14, lines 1-8; applicant states that a remote satellite monitoring system (i.e. remote digital processing system) includes a configuration file for storing pre-defined cookies).
>
> For purposes of further reviewing these claims it will be assumed that the applicant intended to state the cookies are pre-set by the host digital processing system on the remote digital processing system.

(Office Action, 3/15/04, pp. 2 – 3)

Applicant respectfully submits that the Office Action continues to misinterpret the claims and subject matter of the application. Applicant submits that the specification at page 11, lines 18 refers to an embodiment in which a

business site 310 (e.g., a host digital processing system) pre-sets cookies to allow remote satellites to access particular web pages. In other words, the cookies are pre-set on the business site, and not on the remote satellites. Moreover, the specification at page 14, line 2, discusses an embodiment where the configuration file on a remote monitoring system stores parameters for a different business sites that are monitored. The parameters provide a remote monitoring system with the information needed to monitor a host. One such exemplary parameter being pre-defined cookies of a host. As such, applicant submits that claims 9 – 10 and 24 comply with U.S.C. §112, first paragraph. Applicant respectfully requests that the rejection with respect to claims 9 – 10 and 24 be withdrawn.

Rejections under 35 U.S.C. §103(a)

Claims 1, 11 – 14 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sweet in view of Chappelle. In particular, the Office Action states:

> As to claim 1, Sweet teaches a system comprising:
> an intranetwork (pg. 3, line 11; intranet);
> a first host digital processing system coupled to the intranetwork, the first digital processing system having performance parameters (pg. 11, lines 11-16; Sweet discloses that agents monitors the performance of a web site (first host digital processing system) coupled to a network (intranetwork)); and
> a first remote digital processing system to monitor a performance parameter (pg. 11, lines 11-16; Sweet discloses that an agent (first remote digital processing system) connected to the network, monitors the performance of a web site), the first remote digital processing system at a first location similar to that of a first expected user of the first host digital processing system (pg. 4, line 17; pg 11, lines 11-16; Sweet discloses that the agent (first remote digital remote system) runs on a computer, and monitors performance from the perspective of the end user).

(Office Action, 3/15/04, pp. 3 – 4) (underlining emphasis added)

Applicant respectfully submits that claims 1, 11 – 14 and 16 are patentable over Sweet in view of Chappelle.

Claim 1 provides:

> A system, comprising:
> a first host digital processing system coupled to the intranetwork, the intranetwork to couple to an extranetwork, the first digital processing system having performance parameters; and
> a first remote digital processing system to couple to the extranetwork to monitor a performance parameter, ***the first remote digital processing system to couple to the extranetwork at a first location similar to that of a first expected user of the first host digital processing system***. (emphasis added)

Sweet discloses a system that simulates the actions of an actual distributed network software application to evaluate computer resource (e.g., application) response time or availability over a computer network. The simulated application transaction is generated by an intelligent agent software system to evaluate a computer resource. The agent may execute at a point on the network that is highly representative of where an actual end user would be situated, so that the path of associated communication across the network closely simulates the path of communication that is, or likely would be, associated with an actual end user. (Sweet, page. 5, lines 3 – 10). As such, the agent software is a simulation only, and does not geographically position itself where an end user would be located. Moreover, it appears that the inventors of Sweet may have limited their work to the simulation of a transaction to avoid the undue logistical complexity and labor of geographically positioning monitoring systems at the actual physical location of an actual end user. In doing so, applicant respectfully submits that Sweet actually teaches away from physical monitoring, by using simulation software as a substitute. As such, nothing in

Sweet discloses a remote digital processing system at a location similar to that of a first expected user of a host digital processing system.

Chappelle discloses a computer performance monitoring and graphing tool that collects performance data from various operating systems on multiple production computers, converts the performance data to a graphical representation, and stores the graphical representation for on-demand viewing. Production center 102 includes a plurality of production computers 202, a central collection system 204, and an electronic mail (or E-mail) network 206. Production computers 202 communicate with central collection system 204 via E-mail network 206. Production computers 202 may be arranged in local area network (or LAN) configuration. (Chappelle, col. 4, lines 38 – 46, and FIG. 2). Nothing in Chappelle discloses a remote digital processing system at a location similar to that of a first expected user of a host digital processing system. As such, Chappelle fails to cure the deficiency of Sweet.

It is respectfully submitted that Sweet and Chappelle do not teach or suggest a combination with each other. It would be impermissible hindsight, based on applicant's own disclosure, to combine Sweet and Chappelle.

Applicant also respectfully submits that there is no motivation to combine Sweet and Chappelle. Sweet is directed toward a system that simulates a transaction of an end user. Chappelle merely discloses a cluster of production computers communicating with a central collection system. The Office Action recites:

> However, Chappelle teaches limitation of an extranetwork coupled to the intranetwork, and a first remote digital processing system couple to the extranetwork (Fig. 1; Fig. 2; col. 4, lines 3-22, 38-44, 54; Chappelle discloses a web browser (remote digital processing system) connected via an Internet network (extranetwork) to a LAN (intranetwork) of production computers in a production center).

> It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sweet in view of Chappelle so as to connect an intranet to an Internet network. One would be motivated to do so to allow specific external users to access the intranet.

(Office Action, 3/15/04, page 4)

Here, the Office Action merely states an advantage of substituting a communication format from Chappelle into the system of Sweet without explaining what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination.

Even if Sweet and Chappelle were combined, the combination would still not result in the limitations of claim 1. As stated above, claim 1 includes the limitation "the first remote digital processing system to couple to the extranetwork at a first location similar to that of a first expected user of the first host digital processing system." The combination of Sweet and Chappelle does not teach this limitation. As such, the combination cannot be interpreted to disclose the limitations of claim 1. Therefore, applicant respectfully requests the withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) over the combination.

Claims 11 – 14 depend either directly or indirectly from independent claim 1, and thus include the limitation "the first remote digital processing system to couple to the extranetwork at a first location similar to that of a first expected user of the first host digital processing system." As such, applicant respectfully submits that claims 11 – 14 are also patentable over the combination under 35 U.S.C. § 103(a).

New claim 43 recites:

> A system, comprising:
> a first host digital processing system coupled to the intranetwork, the first intranetwork to couple to an extranetwork, the first digital processing system having performance parameters; and
> a first remote digital processing system to couple the extranetwork to monitor a performance parameter, the first remote digital processing system to couple the extranetwork at a first location similar to that of a first expected user of the first host digital processing system, ***wherein the performance parameter is a latency time between a request for data and receiving a first byte of data***. (emphasis added)

With respect to a purported disclosure of a latency time in Sweet, the Office Action states, "the timing threshold parameter is latency (pg. 4, line 14, lines 14 – 19;Sweet discloses measuring total response time (latency)) (Office Action, 3/15/04, p. 5) (underlining emphasis added). The portion of Sweet referred to by the Office Action that purportedly discloses latency actually discusses response time. In particular, Sweet states that "the application response time is an amount of time between a time when a transaction involving an application is started by the software agent and a later time when the transaction is completed (e.g., when the last protocol message has been processed).

In contrast, claim 43 includes the limitation of "wherein the performance parameter is a latency time between a request for data and receiving a first byte of data." As such, applicant respectfully submits that claim 43 is patentable over the combination of Sweet and Chappelle, because the combination of Sweet and Chappelle does not teach this limitation. Therefore, applicant respectfully submits that claim 43 is patentable over the cited references.

Claims 2 – 6, 9 – 10, 17 – 29 and 31 – 41 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sweet in view of Chappelle, and further in view of Welter. Applicant respectfully submits that claims 2 – 6, 9 – 10, 17 – 29 and 31 – 41 are patentable over the combination. Claims 2 – 6, 9 – 10, and 17 – 19 depend either directly or indirectly from independent claim 1, and thus include the limitation, "the first remote digital processing system to couple to the extranetwork at a first location similar to that of a first expected user of the first host digital processing system." As discussed above, the combination of Sweet and Chappelle does not teach this limitation.

Claims 21 – 26, 28, 29, and 31 – 34 depend either directly or indirectly from independent claim 20.

Claim 20 recites:

> A method of network monitoring, comprising:
> positioning a remote digital processing system on a backbone network remotely from a host digital processing system, ***the remote digital processing system position approximate that of an expected user of the host digital processing system***, the host digital system coupled to the backbone network through an intranetwork; and
> monitoring a performance parameter of the host digital processing system with the remote digital processing system.
>
> (emphasis added)

For reasons similar to those discussed above with respect to claim 1, nothing in Sweet or Chappelle, alone or in combination, teaches the emphasized limitation of claim 20.

Claims 36 and 37 depend either directly or indirectly from independent claim 35.

Claim 35 recites:

> A method, comprising:
> monitoring performance parameters of a host digital processing system coupled to an extranetwork using a plurality of remote digital processing systems, the extranetwork comprising a plurality of backbone networks, ***at least one of the plurality of remote digital processing systems selectively coupled to at least one of the plurality of backbone networks at a position approximate that of an expected user of the host digital processing system***. (emphasis added)

For reasons similar to those discussed above with respect to claim 1, nothing in Sweet or Chappelle, alone or in combination, teaches the emphasized limitation of claim 35.

Claims 39 – 41 depend either directly or indirectly from independent claim 38.

Claim 38 recites:

> An apparatus, comprising:
> a remote digital processing system on a backbone network positioned remotely from a host digital processing system, ***the remote digital processing system position being approximate that of an expected user of the host digital processing system***, the host digital system coupled to the backbone network through an intranetwork; and
> means for monitoring a performance parameter of the host digital processing system with the remote digital processing system. (emphasis added)

For reasons similar to those discussed above with respect to claim 1, nothing in Sweet or Chappelle, alone or in combination, teaches the emphasized limitation of claim 38.

Welter discloses a system for testing a web site by formulating a test configuration file that includes a series of test inquiries. A testing computer 22 implements a testing process. A tester software 46 executed on the testing communicates directly with the Internet 12 through ISP 24. The tester 46 and

the web browser 48 can be implemented on the same computer apparatus ("machine") or on separate computer apparatus. (Welter, col. 4, lines 13 – 27, and FIGS. 1 – 2A). Nothing in Welter discloses a remote digital processing system positioned approximate that of an expected user of the host digital processing system. As such, Welter fails to cure the deficiency of Sweet and Chappelle.

It is respectfully submitted that Sweet, Chappelle, and Welter do not teach or suggest a combination with each other. It would be impermissible hindsight, based on Applicant's own disclosure, to combine Sweet, Chappelle, and Welter.

Applicant also respectfully submits that there is no motivation to combine Sweet, Chappelle, and Welter. Sweet is directed toward a system that simulates a transaction from an end user. Chappelle merely discloses a cluster of production computers communicating with a central collection system. Welter is directed towards testing a web site by formulating a test configuration file that includes a series of test inquiries.

Even if Sweet, Chappelle, and Welter were somehow combined, the combination would still not result in the above emphasized limitations of claims 20, 35, and 38. Nothing in Sweet, Chappelle, or Welter teach or suggest a remote digital processing system position approximate that of an expected user of the host digital processing system. As such, the combination cannot be interpreted to disclose the limitations of claims 20, 35, and 38. Therefore, applicant respectfully requests the withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) over the combination. Accordingly, dependent claims 21 – 26, 28, 29, 31 – 34, 36, 37, and 39 – 41 are also patentable over the combination and applicant requests withdrawal of the rejection.

New claim 44 recites:

> A method of network monitoring, comprising:
>
> positioning a remote digital processing system on a backbone network remotely from a host digital processing system, the remote digital processing system position approximate that of an expected user of the host digital processing system, the host digital system coupled to the backbone network through an intranetwork; and
>
> monitoring a latency time of the host digital processing system with the remote digital processing system, the monitoring comprising:
>
> establishing a connection with the host digital processing system;
>
> performing a transaction with the host digital processing system, wherein the latency time is associated with the transaction; and
>
> ***calculating the latency time between a request for data and receiving a first byte of data.***

(emphasis added)

With the purported disclosure of a latency time in Sweet, the Office Action states:

> Claims 26 – 29 represent method claims that correspond to system claims 12, 16, 14 and 13, respectfully. They do not teach any new limitations above claims 12, 16, 14, and 13, and therefore are rejected for similar reasons.

(Office Action, 3/15/04, p. 10)

The portion of Sweet referred to by the Office Action that purportedly discloses latency actually discusses response time. In particular, Sweet states that "the application response time is an amount of time between a time when a transaction involving an application is started by the software agent and a later time when the transaction is completed (e.g., when the last protocol message has been processed).

In contrast, claim 44 includes the limitation of "calculating the latency time between a request for data and receiving a first byte of data." As such, applicant

respectfully submits that claim 44 is patentable over the combination of Sweet, Chappelle, and Welter because the combination of Sweet, Chappelle, and Welter does not teach this limitation. Therefore, applicant respectfully submits that claim 44 is patentable over the cited references.

Claims 7 and 8 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sweet in view of Chappelle, in view of Welter, and further in view of Davis. Applicant respectfully submits that claims 7 and 8 are patentable over the combination. Claims 7 and 8 depend either directly or indirectly from independent claim 1, and thus include the limitation, "the first remote digital processing system to couple to the extranetwork at a first location similar to that of a first expected user of the first host digital processing system." As discussed above, the combination of Sweet, Chappelle, and Davis does not teach this limitation.

Davis discloses a system management controller that monitors the status of various system components to determine whether the respective system components are operating within respective predetermined operating ranges. The system management controller is capable of taking corrective action. The system management controller runs a Transmission Control Protocol/Internet Protocol (TCP/IP) stack independent of the system and reports problems to a network server or other remote device. (Davis, para. 0017). In particular, the system management controller is connected directly to the computer system. Nothing in Davis discloses a remote digital processing system positioned approximate that of an expected user of the host digital processing system. As such, Davis fails to cure the deficiencies of Sweet, Chappelle, and Welter.

It is respectfully submitted that Sweet, Chappelle, Welter, and Davis do not teach or suggest a combination with each other. It would be impermissible

hindsight, based on applicant's own disclosure, to combine Sweet, Chappelle, Welter, and Davis.

Even if Sweet, Chappelle, Welter, and Davis were somehow combined, the combination would still not result in all the limitations of claim 1. Nothing in Sweet, Chappelle, Welter, and Davis teach or suggest a remote digital processing system to couple an extranetwork at a first location similar to that of a first expected user of the first host digital processing system. As such, the combination cannot be interpreted to disclose the limitations of claim 1. Accordingly, dependent claims 7 and 8 are also patentable over the combination and applicant requests withdrawal of the rejection.

New claim 42 recites:

> A system, comprising:
> a first host digital processing system coupled to the intranetwork, the first intranetwork to couple to an extranetwork, the first digital processing system having performance parameters; and
> a first remote digital processing system to couple the extranetwork to monitor a performance parameter, the first remote digital processing system to couple the extranetwork at a first location similar to that of a first expected user of the first host digital processing system, ***wherein the performance parameter is a transfer rate of bytes between a first byte and a last byte of a response***. (emphasis added)

With respect to a purported disclosure of a transfer time in Boss, the Office Action states:

> As to claim 15, the combination of Sweet in view of Chappelle teaches the invention substantially as claimed (see rejection of claim 11 above).
> The combination fails to teach the limitation wherein the timing threshold parameter is a transfer rate.
> However, Boss teaches the limitation of a timing threshold parameter that is the transfer rate (col. 6, lines 3-11; Boss

discloses that data gathering clients collect data on the transfer speed of a connection to the Internet).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sweet in view of Chappelle, in view of Boss so as to monitor the transfer rate of a connection to a web site. One would be motivated to do so to rate the quality of the connection to the web site.

(Office Action, 3/15/04, p. 13) (underlining emphasis added)

Boss discloses a system for monitoring the performance of Internet connections via dial-up telephone connections. In particular, Boss discloses that system 400 is a "distributed" system employing a number of data-gathering clients 402-405 connected to the Internet via local (i.e., not long distance) dial-up telephone connections. (Boss, col. 3, lines 57 – 65, and FIG. 5).

In contrast, claim 42 includes the limitation of "wherein the performance parameter is a transfer rate of bytes between a first byte and a last byte of a response." As such, applicant respectfully submits that claim 42 is patentable over the combination of Sweet, Chappelle, and Boss, because the combination of Sweet, Chappelle, and Boss does not teach this limitation. Therefore, applicant respectfully submits that claim 42 is patentable over the cited references.

New claim 45 recites:

A method of network monitoring, comprising:

positioning a remote digital processing system on a backbone network remotely from a host digital processing system, the remote digital processing system position approximate that of an expected user of the host digital processing system, the host digital system coupled to the backbone network through an intranetwork; and

monitoring a data transfer rate of the host digital processing system with the remote digital processing system, the monitoring comprising:

establishing a connection with the host digital processing system;

performing a transaction with the host digital processing system, wherein the data transfer rate is associated with the transaction; and

calculating the data transfer rate of bytes between a first byte and a last byte of a response.

(emphasis added)

With respect to the purported disclosure of a transfer time in Boss, the Office Action states:

> As to claim 30, the combination of Sweet in view of Chappelle, in view of Welter teaches the invention substantially as claimed (see rejection of claim 25 above).
>
> The combination fails to teach the limitation wherein measuring comprises calculating a data transfer rate.
>
> However, Boss teaches the limitation of calculating a data transfer rate (col. 6, lines 3-11); Boss discloses that data gathering clients collect data on the transfer speed of a connection to the Internet.
>
> It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sweet in view of Chappelle, in view of Welter, in view of Boss so as to monitor the transfer rate of a connection to a web site. One would be motivated to do so to rate the quality of the connection to the web site.

(Office Action, 3/15/04, p. 14) (underlining emphasis added)

It is respectfully submitted that Boss does not disclose calculating a rate of bytes per second between a first byte and a last byte of a response. Boss discloses a system for monitoring the performance of Internet connections via dial-up telephone connections.

In contrast, claim 45 includes the limitation of "calculating the data transfer rate of bytes per second between a first byte and a last byte of a response." As such, applicant respectfully submits that claim 45 is patentable over the combination of Sweet, Chappelle, Welter, and Boss, because the combination of

Sweet, Chappelle, Welter, and Boss does not teach this limitation. Therefore, applicant respectfully submits that claim 45 is patentable over the cited references.

In conclusion, applicant respectfully submits that in view of the arguments set forth herein, the applicable rejections have been overcome.

If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Daniel Ovanezian at (408) 720-8300.

If there are any additional charges, please charge our Deposit Account No. 02-2666.

Respectfully submitted,

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